IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 9413 to 9429 of 2000
with
SPECIAL CIVIL APPLICATION Nos 9476 TO 9480 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD.

Versus

BABUBHAI R PATEL

Appearance:

MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/10/2000

C.A.V. JUDGEMENT

(Per : D.H.Waghela, J.)

1. In these groups of petitions, a common question of law is involved and hence they are argued together and

disposed by this common judgment.

2. The relevant facts are that the common petitioner in all these petitions, namely, Gujarat Industrial Investment Corporation Ltd., formulated a Voluntary Retirement Scheme (VRS) for its employees, which the respondents among the employees accepted and accordingly they were relieved and paid major portions of the amounts under the scheme. The further amounts payable under the VRS were also paid by the petitioner and accepted by the respective respondents. However, before the last of the small part of the moneys due under the scheme were paid, some of the respondents filed complaints before the Assistant Commissioner of Labour stating that their services were terminated by way of victimization and that the acceptance of VRS by them was under coercion. The petitioner made its representation before the Assistant Commissioner of Labour stating that the employees concerned had voluntarily applied for, resigned and accepted the amount of compensation under the VRS. And that the allegations of termination by coercion or victimization were by way of an afterthought. Thus, the Assistant Commissioner of Labour was requested to close the chapter. However, by the impugned order, the Assistant Commissioner of Labour, having been delegated the authority to do so, referred the disputes of the respective respondents to the Labour Court for adjudication. The schedule to these impugned orders containing the terms of reference read as under:

" Whether.....(name of the employee concerned) should be reinstated on the original post with full backwages or not? ".

3. The learned counsel for the petitioner vehemently argued that the impugned orders referring the alleged dispute were made without any application of mind to the undisputable facts placed on record. The employees concerned had voluntarily and in writing accepted the terms of the VRS and also accepted huge amounts running upto Rs.14,37,181 in case of a manager among the employees concerned; that even after being relieved upon their acceptance of voluntary retirement, they had accepted the amounts due under the scheme in three installments. Therefore, their filing of a complaint and making of a demand for reinstatement thereafter was ex facie mala fide and illegal; and the appropriate Government had no jurisdiction to refer such matters for adjudication to a Labour Court. It was further argued that the appropriate Government ought to have examined the demand of the employees concerned and in view of the

same being patently frivolous, the impugned order of reference ought not to have been made. Although the employees concerned in these cases include peon, havaldar, driver, jamadar, assistant, deputy manager and even a manager, in view of their gross salaries exceeding Rs.6000/- in each case, they were not "workmen" within the definition of the Industrial Disputes Act, 1947, according to the submissions.

4. The learned counsel relied upon the observations of the Supreme Court in NATIONAL ENGINEERING INDUSTRIES LTD. v. STATE OF RAJASTHAN [(2000) 1 SCC 371, to submit that a High Court has jurisdiction to entertain a petition when there is an allegation that there is no "industrial dispute" and none apprehended which could be the subject-matter of reference for adjudication. If there was no industrial dispute that existed or was apprehended, the appropriate Government lacked power to make any reference. Reading these observations in their context, it is also observed that when there is a dispute about the settlement being bona fide in nature or that it was arrived at on account of fraud, misrepresentation or concealment of facts or other inducements, it could be the subject-matter of an industrial dispute which the appropriate Government may refer. Therefore, the ratio of this judgment hardly takes the case of the petitioner any further, particularly when it is not the case of the petitioner that the VRS was adopted and accepted under a legal and binding settlement under the I.D.Act. This is, however, not to suggest that, in the facts of the present case, the employees concerned have a good case on merits in the course of adjudication.

5. The relevant issue, however, which arises in these cases is whether the appropriate Government lacked the power to refer or whether the order of reference can otherwise be set aside at this stage. In the statutory scheme of the I.D.Act, any dispute or difference between the employer and the employee is an "industrial dispute" and in case of an individual workman, any such dispute or difference arising out of discharge, dismissal, retrenchment or termination has to be deemed to be an "industrial dispute". The appropriate Government is clothed with the power to refer the dispute without giving any reasons if, in its opinion, an industrial dispute exists or is apprehended. In a recent judgment of the Supreme Court in the SECRETARY, INDIAN TEA ASSOCIATION v. AJIT KUMAR BARAT [(2000) 3 SCC 93] where an order directing the State Government to make a reference was confirmed by the High Court and came to be challenged before the Apex Court, the law on the point is

summarised as under:

"1. The appropriate Government would not be justified in making a reference under S.10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made, it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under S.10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate government under S.10 of the Act being an administrative order, no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

6. In the facts of the present case, there is nothing to suggest that the appropriate Government had taken into consideration any irrelevant or foreign material and the issue whether there was any material before the Government to support its administrative order of making the reference is not open for scrutiny. As held by the Supreme Court in M.P.IRRIGATION KARMACHARI SANGH v. STATE OF M.P. [AIR 1985 SC 860], Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes and to allow the Government to do so would be to render Sections 10 and 12 (5) of the Act nugatory.

7. Some of the employees concerned have communicated in writing to the petitioner, before being fully paid the amount under the VRS, that they were compelled to accept the scheme under pressure and threat of immediate transfer and loss of VRS benefits and hence had sought to withdraw from the scheme.

8. In the facts and for the reasons discussed hereinabove, the impugned administrative orders made on the subjective satisfaction of the Government referring the disputes of the respective respondents in each petition cannot be set aside in absence of the consideration of any irrelevant or foreign material having been established. Accordingly, the petitions are dismissed with no order as to costs.

Sd/-

(D.H.Waghela, J.)

KMG Thilake

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